

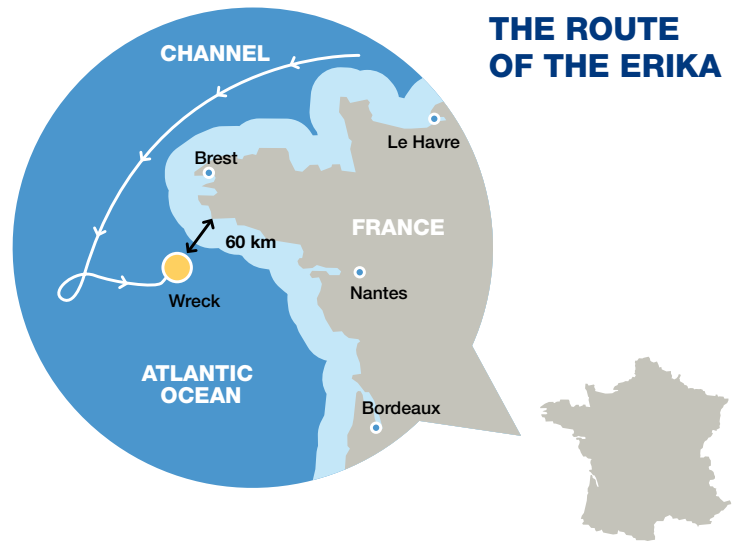
UNDERSTANDING
THE ERIKA
APPEAL



TOTAL

A REMINDER OF THE FACTS

- On December 12, 1999, the tanker Erika broke in half and sank 60 kilometres south of Penmarc'h Point in Brittany. All 26 crew members were rescued by French Navy helicopter. The tanker was carrying No. 2 heavy fuel oil destined for Italy's national electric utility ENEL for use in power generation.
- Total chartered the Erika in good faith on the basis of seaworthiness certification provided by RINA, a member of the International Association of Classification Societies (IACS), which consists of the world's ten leading classification societies.
- The tanker sank due to severe corrosion of the vessel's internal structures, which were thus unable to withstand the bad weather. This corrosion had been concealed from the charterer; the various judicial investigations have since demonstrated that the true condition of the vessel's internal structures was not consistent with the certificate issued by RINA.



THE OIL SPILL AND ITS CONSEQUENCES

The oil spill affected a 400-kilometre stretch of the French Atlantic coast between the Finistère and Charente-Maritime regions. Nearly 270,000 metric tons of waste, consisting of heavy fuel oil mixed with seawater, sand, stones and other matter, was taken to Total's Donges refinery site for treatment.

Of the 30,884 metric tons of cargo carried by the Erika:

- about 11,000 metric tons still in the vessel was pumped out by Total during the summer of 2000,
- around 10,000 metric tons was recovered when the waste collected along the shoreline was treated,
- 1,000 metric tons was skimmed from the sea before the oil spill reached the coast,
- most of the remaining fuel oil biodegraded in the sea or on the shore.

TIMELINE - 1999

- **December 8:** the Erika loaded 30,884 metric tons of No. 2 heavy fuel oil in the port of Dunkirk and left for Italy.
- **December 11:** when the tanker was well into the Bay of Biscay, the Master noticed that it was listing heavily. At 2:08 pm, the Master sent a distress call, which he cancelled 3:14 pm. At 6:34 pm the Master left a message on Total's voicemail service saying that he was changing course and would return to the regular route when the weather permitted. At 9:23 pm he confirmed to Total by telephone that the situation was under control and that there was no pollution.
- **December 12:** the Master sent a second distress call and requested that his crew be evacuated. At 8:20 am the vessel broke in two. Total's crisis unit was activated at 9:00 am.
- **December 24:** the first patches of oil reached the coast.
- **December 30:** Total set up the Atlantic Coast Task Force mainly to coordinate operations to pump the oil out of the wreck, to clean the coastline and treat the resulting waste.

December 8
Loading of the tanker

December 11
First distress call,
later cancelled

December 12
Sinking of the Erika

December 24
Arrival of the first patches
of oil on the coast

December 30
Setting up of the
Atlantic Coast Task Force

THE APPEAL PROCEEDINGS

- The appeal will be heard by the Court of Appeal in Paris starting on October 5, 2009, and the hearings should last about two months.
- The Public Prosecutor, Antonio Pollara, Giuseppe Savarese, RINA and TOTAL S.A. have all appealed against the decision handed down by the Criminal Court in Paris on January 16, 2008. A number of civil parties have indicated that they will associate themselves with the Public Prosecutor.
- Other civil parties, such as Capt. Karun Mathur, have launched civil proceedings to appeal against the amount of compensation set by the decision.

PARTIES INVOLVED IN THE APPEAL PROCEEDINGS

Defendants	66 civil party appellants	Witnesses and experts (as of September 15, 2009)
<p>Giuseppe Savarese (Tevere Shipping), ship-owner. Antonio Pollara (Panship), ship manager. Karun Mathur, Master of the Erika. RINA, legal entity, classification society. TOTAL S.A., legal entity, charterer. TTC (Total Transport Corporation). TPS (Total Petroleum Services), legal entities.</p>	<p>3 regional councils 4 general councils 26 communes and public corporations 18 associations numerous companies and private individuals</p>	<p>Between 30 and 40 *</p> <p>*the final list will be announced 10 days before the start of proceedings</p>

THE ROLES PLAYED BY THE DIFFERENT PARTIES INVOLVED IN MARITIME SHIPPING

Players	Role	In the Erika case
Ship-owner	Owns the vessel, which is registered in its name. Fits out the vessel, but may delegate its management to a third party.	Tevere Shipping, registered in Malta and owned by Giuseppe Savarese
Ship Manager	Handles the technical and nautical management of the vessel. Takes out insurance, recruits the crew, checks the certification documents, carries out maintenance and inspects the ship's condition.	Panship, registered in Ravenna, Italy and headed by Antonio Pollara
Classification society	Classifies the vessel for the ship-owner and certifies the vessel for the flag state. It verifies compliance with safety regulations and standards and delivers a Certificate of Classification regarding the ship's structural integrity, among other aspects.	RINA for Panship
Shipyard	Builds the vessel and carries out repairs and maintenance work.	Built in 1975 by Japan's Kasado Dock Co. Last major dry-dock overhaul performed at Bijela shipyard in Montenegro in the summer of 1998, under RINA supervision.
Flag state	The state whose flag is flown by the vessel. The flag state is responsible for ensuring that the vessel complies with international regulations. Certification is sometimes delegated to a classification society.	Malta, with certification delegated to RINA
Consignor	Commits the cargo.	Total Raffinage & Marketing
Time charterer	Charters a vessel with crew for a specified period of time and manages the vessel's commercial activity.	Selmont/Amarship
Voyage charterer	Charters an outfitted vessel for one or more voyages for the transportation of cargo and manages the operational aspects of the charter. Does not manage the vessel's nautical or commercial activities.	TOTAL S.A. via its chartering subsidiary Total Transport Corporation (TTC)
Vetting department	Selects the ships that are suitable for charter by oil companies.	TOTAL S.A.

QUESTIONS

1 What caused the Erika to sink?
According to the panel of experts appointed by the Dunkirk Commercial Court and the report of the subsequent judicial inquiry, the cause was serious corrosion of the internal structures of the vessel. This conclusion was reiterated in the decision of Criminal Court in Paris. The corrosion had been concealed from the charterer, TOTAL S.A. The vessel had nonetheless been issued with a certificate by RINA, a leading classification society and member of the IACS*, attesting that its structures were in good condition. The Erika had recently undergone a major 5-yearly dry-dock overhaul, during which significant repairs were carried out. The gale force winds (Beaufort 8-9) that the Erika faced on December 11 and 12 were a contributing factor but were not sufficient on their own to cause the vessel to sink.

2 Is there any further recourse if this first appeal fails?
Total feels that the court's decision is unfair and wishes to contest the grievances directed at it. An appeal is the normal recourse here, open to any person or entity to whom the law applies. The Public Prosecutor has also appealed in general terms, except for the charge of endangerment which was dismissed by the court. A number of civil parties have also appealed the decision. If the appellants are still not satisfied, it is possible to go to the final Court of Appeal, which is competent on questions of law but will not hear evidence on the facts themselves.

3 Why has Total compensated the victims if you are appealing against the decision?
There are two different issues here: compensation for harm or loss to victims; and the overall safety of maritime shipping. We do recognise the harm or loss suffered by the victims. The sinking of the Erika was a traumatic experience for everyone in France, including all Total employees. Out of a spirit of solidarity and the desire to help the victims turn the page, we have offered them immediate, full and final compensation, complying with the amounts laid down by the court. And starting in December 1999, we have also – spontaneously and before any legal proceedings – set up a special Atlantic Coast Task Force with a budget of €200 million to clean up the beaches,

& ANSWERS

treat the waste matter and recover the oil remaining in the sunken vessel's tanks. We did not feel it was necessary to be held responsible for the sinking in order to provide support for the victims. We do not wish to turn the legal page as well. We are sticking firmly to our position on the importance of maritime safety and the roles assumed by the different players. And we find it unacceptable that the court should designate Total as one of those responsible for the sinking. It is not Total's job to inspect the structure of any vessel: that is the responsibility of the ship-owner and the classification society. We consider that we were in no way negligent in selecting a vessel that had all the required certificates.

4 Do you feel that the amounts of compensation fixed by the court are appropriate?

The court weighed the losses suffered by the authorities, local bodies, associations, companies and private individuals. Naturally, we also factored these in when expressing our solidarity.

5 Is it possible for any civil party that Total has already compensated to appeal against the court's decision?

A civil party that has accepted the compensation offered by Total before the appeals process can associate with the Public Prosecutor's appeal against the grounds of the decision but cannot start civil proceedings to alter the amount of compensation, because that civil party has already agreed to the amount determined by the court.

6 What do you think of the court's decision to recognise the notion of "ecological loss"?

The Criminal Court in Paris agreed to award compensation for "environmental loss" to local bodies with a particular responsibility or mission to protect, manage or conserve a sensitive natural zone. The court found that this was applicable to the Morbihan (southern Brittany) General Council and extended its applicability to an association whose mission is to safeguard nature and the environment: the Bird Protection League (LPO). Total does not contest the notion of environmental loss but does feel that the

way it is applied in practice, as set out in the decision, should be clarified further. It should be noted that this is not the first time a court has recognised the notion of environmental or ecological loss. A number of other courts have already done so in the past. Total did not wait for any court's decision before moving to make up for any loss via the actions of the Atlantic Coast Task Force and the Group's initiatives to have the IOPC raise its compensation ceilings.

7 Has Total tightened its rules governing ship charter since the court's decision?

The Group has learned a number of lessons from the Erika sinking. If we want to prevent similar disasters from occurring, we have to understand the root causes and get together with all other players in the maritime transport sector to devise more effective safety measures. That is also the main thrust of the European Commission's Erika I, II and III directives. We have also taken very concrete steps to tighten vessel selection:

- Total only charters double-hulled vessels,
- for oil tankers and chemicals carriers, we have set an age limit of 20 years,
- for ships carrying heavy fuel oil, the age limit is 15 years.

Our vessel selection criteria are among the strictest in the industry and the average age of vessels currently under charter is 5 years, compared to 10 years for the industry as a whole.

8 Shouldn't heavy fuel oil be considered as a waste product?

Heavy fuel oil is a commercial product produced by refineries. It is the third most commonly used petroleum product after gasoline and diesel fuel. The Criminal Court in Saint-Nazaire ruled on December 6, 2000 that fuel oil is not a waste product, and this judgment was upheld by the Appeals Court in Rennes on February 13, 2002. In 2008, the Court of Justice of the European Communities as well as the Final Appeals Court both agreed that N°2 fuel oil is a commercial product. However, when this oil is mixed with seawater and sand, it is no longer a commercial product but waste and needs to be treated. The waste from the Erika was treated at Total's Donges refinery between 2000 and 2004.

REMINDER OF THE LEGAL TIMELINE

- **NOVEMBER 2005:** end of the judicial inquiry into the causes of the sinking by a panel of experts appointed by the Dunkirk Commercial Court.
- **FEBRUARY 2006:** the investigation is closed and the case is sent for trial before the Criminal Court in Paris.
- **FEBRUARY TO JUNE 2007:** the case is heard by the Criminal Court in Paris.
- **JANUARY 16, 2008:** the Criminal Court in Paris hands down its decision.
- **END OF JANUARY 2008:** TOTAL S.A., the Public Prosecutor and several other parties appeal against the decision.
- **OCTOBER 5, 2009:** start of the appeal proceedings in Paris.

ACTION UNDERTAKEN BY TOTAL

In line with its commitments, Total took the following action via the Atlantic Coast Task Force:

- the oil remaining in the Erika sunken vessel's tanks was pumped out and recovered (June 1 to September 6, 2000)
- the coastline was cleaned and restored (January 2000 to June 2003)
- all waste was treated at the Donges refinery (2000 to 2004)

The action taken by the Atlantic Coast Task Force involved 800 people and a budget of €200 million, of which €72 million for the oil pumping operations and €72 million for waste treatment.

*IACS: International Association of Classification Societies, comprising the 10 societies with the highest standards. Total only charters vessels classified by IACS members. RINA is a member of IACS.

WHY TOTAL IS APPEALING AGAINST THE DECISION

- In its decision handed down on January 16, 2008, the court found TOTAL S.A. guilty of the offence of pollution, adding that the company had been negligent in its procedures for verifying and selecting the vessel. Bertrand Thoulin, Legal Officer of Total Trading & Shipping at the time of the sinking, along with both Total Trading & Shipping and Total Transport Corporation, were acquitted.
- Total is appealing a decision that it deems unfair and that runs counter to the intended aim of enhancing maritime transportation safety. But at the same time, Total has taken an irrevocable decision to compensate all civil parties who suffered loss due to the pollution, to the amounts fixed by the court.
- The Erika sinking was a traumatic experience for everyone living on France's Atlantic coastline and Total is fully aware of the losses sustained by the victims of the pollution. The Group immediately offered to pay the civil parties compensation fixed by the court, in full and final settlement of all claims. 37 of the plaintiffs accepted this offer, including the State and 22 local authorities, with Total disbursing €170 million. Acceptance of this compensation does not prevent civil parties from associating with the Public Prosecutor in the appeal.

As regards the safety of maritime transport, Total is unwilling to accept any responsibility for the disaster because:

- As the voyage charterer of the vessel, Total had no control or influence over the management or the operation of the Erika, which is a prerequisite for being held legally responsible.

- Selection of a vessel for charter a year before cannot be the cause of a sinking. Therefore Total cannot be considered as having caused the Erika to sink.
- Total also denies the charge of negligence when implementing its vetting (vessel verification and selection) procedure. Vetting was carried out in compliance with the Group's standards and those applied by the other oil Majors. Total feels that it was misled by certificates that concealed the fact that the ship's internal structure was deteriorated. International law assumes on a clear separation of the roles assumed by the different players in maritime transport. It is not the role or the business of the company chartering a vessel to act as a substitute for the ship-owner, the flag state or the classification society.
- Lastly, part of France's Anti-Pollution Bill passed in 1983, on which the decision of the court is based, is not compatible with the international MARPOL convention. An international convention is deemed to take precedence over national legislation when the country in question has ratified that convention, and France has ratified MARPOL.

- The court's decision forces users to become inspectors, potentially weakening the responsibility of those who have the expertise, duty and actual power to inspect tankers, and especially their structures. This confusion of responsibilities could eventually make maritime transport less safe.

COMPENSATION

- The compensation of victims of an oil spill is mainly the purview of the IOPC Fund. Following the Erika disaster, the IOPC received nearly 7,000 claims for compensation and 100% of admissible claims have been settled on the basis of IOPC criteria. To date, the fund has paid out about €129 million.
- Claims for complementary compensation for losses not covered by IOPC criteria may be lodged by the civil parties during the proceedings. These claims are admissible providing that the court finds either legal entities or natural persons responsible for causing the losses. The amount of compensation payable is fixed by the court but the claimant can then appeal against the decision. In very specific cases, the court may award compensation for loss due to environmental damage.
- In the decision handed down on January 16, 2008 the Criminal Court in Paris set the amount of compensation for admissible claims made by civil parties, specifying the amounts corresponding to material loss, moral loss and legal costs. It also recognised that two entities, the Morbihan General Council and the LPO, had sustained loss due to damage to the environment.
- TOTAL S.A., Guiseppe Savarese, Antonio Pollara and RINA were held liable jointly and severally, to pay compensation amounting to €192 million.

GLOSSARY

- **IOPC:** the International Oil Pollution Compensation Fund provides compensation for damage due to oil pollution. The fund adds a second tier of compensation in cases where the first tier, paid by the ship-owner, is insufficient. Total contributes to the fund pro-rata, with input indexed to the Group's hydrocarbon imports into countries that have ratified the international convention setting up the IOPC. Since the Erika disaster, the IOPC compensation ceiling has been practically quadrupled, now standing at €900 million per incident. Total worked with other oil companies to bring about this increase.
- **MARPOL (Marine Pollution):** an international convention on marine pollution caused by shipping, drawn up under the aegis of the International Maritime Organization (IMO). The convention, signed on November 2, 1973, was modified by a protocol in 1978 and two further amendments. MARPOL has been signed by 136 countries, including France.
- **ANTI-POLLUTION BILL (JULY 1983):** This legislation sets out the sanctions applying to marine pollution by hydrocarbons. The bill has been amended several times. Article 8 of the bill is incompatible with the international MARPOL Convention, and it was wrongly used as a reference by the court.
- **CIVIL PARTY:** an individual or entity that deems itself a victim of an offence that is the subject of a public prosecution and is claiming damages for its loss. A civil party associates in the action initiated by the Public Prosecutor. Once a court has determined criminal liability, it then examines claims for damages and sets the amount of compensation.

LEARNING THE LESSONS FROM ERIKA

Total has always had strict rules regarding the vetting of vessels for charter. The Group's selection criteria, further tightened following the Erika sinking, are today among the most stringent in the industry.

Improving maritime shipping safety remains a constant concern for oil companies and for all players in the maritime transport industry, and there has been a steady decline in accidental oil spills at sea. The Erika disaster galvanised all players, including the States that devise and enforce the regulations as well as the companies responsible for supervising compliance, such as ship-owners and classification societies. The European Commission has also issued a number of directives – Erika I, II and III – which require: the gradual phase-out of all single-hulled vessels by 2010; EC approval of classification societies; tighter criteria for inspections by Member States (and inspection of 100% of vessels); and a list of all refuge ports. Total was in favour of and has implemented these measures, systematically tightening all selection criteria used in vetting charter vessels.

Vessel selection

Regardless of the type of vessel, Total applies strict selection criteria to the ships it charters and ensures that the ship-owners comply fully with:

- regulations laid down by international shipping conventions,
- national regulations and the results of inspections carried out by the flag state, port authorities, certification agencies, etc.,
- recommendations made by industry organisations,
- Total's Health, Safety, Environment & Quality Charter and the Group's own safety standards.

Chartering criteria

Age limit for oil tankers and chemicals carriers: 20 years.

Age limit for tankers carrying heavy fuel oil: 15 years.

Only double-hulled vessels.

These chartering criteria are reviewed regularly.

Vetting

Vetting is the process by which an oil company determines whether a vessel is suitable to be chartered, based on the information available to the company. In Total's case, the Vetting department ensures that the vessel complies with the Group's chartering criteria.

This voluntary system is in no way intended to replace certification by classification societies, whose responsibility it is to certify that a vessel is seaworthy and complies with maritime safety regulations. Oil companies' vetting departments help them choose a suitable vessel from among the certified vessels exclusively.

The Vetting department assesses the condition of a vessel, on the basis of ship-inspection reports. Inspection reports received by oil companies who are members of the Oil companies International Marine Forum (OCIMF) are shared via the joint Ship Inspection Report (SIRE) database. Vetting inspections are usually carried out during commercial unloading operations and do not include a survey of the vessel's structural elements, which is the responsibility of the classification society and the ship-owner.

Total's decision to tighten its chartering criteria has resulted in a significant lowering of the average age of vessels used by the Group. At January 1, 2009, the average age of the tankers under time-charter to Total was 5 years, one of the lowest in the industry. On average, Total charters 3,000 voyages each year.

POLLUTION RESPONSE

Total ensures that it is always ready to deal with emergency situations and pollution risks. The Group is a member of pollution-response cooperatives such as UK-based Oil Spill Response Limited and France's CEDRE, an organisation that conducts research into accident water pollution.

Total also has pollution-control equipment available at a number of Group sites as well as a major response centre in the south of France (Bouches-du-Rhône), the Fast Oil Spill Team (FOST) shared with the Marseille seagoing fire brigade. In addition, the Group maintains a team of experts specialising in accidental pollution of surface waters.

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